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25-8799

(15 September 1954)

MEMORANDUM FOR: Deputy Assistant Director for Personnel

SUBJECT : Invitational Travel Expenses for Candidates
For Employment

1. Your memorandum requested the opinion of this office with regard to the propriety of payment by the Agency of the round-trip travel expenses, including per diem, or the equivalent of these on a constructive, lump-sum basis, to persons who either (a) prior to their having been placed in an employment status, are ordered to travel, and do travel, from their places of residence to headquarters for the purpose of taking medical and polygraph examinations, or (b) having been placed in an employment status at headquarters, are rejected for further employment for failure to pass medical or polygraph examinations, or both. We are advised informally that these questions are posed because your office is seeking a ~~some~~ to avoid any adverse publicity for the Agency originating with applicants for employment who inconvenience themselves to come to Washington in the belief that they have been accepted for employment, but then are rejected.

2. In your paragraph 1-a, you query whether round-trip travel and per diem expenses could be allowed in the instance of an applicant for employment who is brought to Washington solely for the purpose of being given medical and polygraph examinations and then returned to his home of record to await orders to duty, or a polite rejection. The rule which would appear to be applicable to such a situation is set out in 31 C.G. 175 (1951) as follows:

. . . it has been a general rule that Government agencies may not pay or reimburse an individual for the expenses incurred in traveling to Washington, D.C., or to any other point for determination of the qualifications to hold a Government position if the position is to be filled subject to the Civil Service laws and regulations as the function of ascertaining the qualifications of prospective employees is a matter within the jurisdiction of the Civil Service Commission. However, where the prospective employees are to be appointed to positions excepted from the Civil Service laws and regulations and the Classification Act, it has been held that the prospective employee could be transported to the place of employment for interviews before hiring. (3 Comp. Gen. 590; 15 id. 206. (Emphasis Supplied))

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This statement is enlarged upon in 31 C.G. 480 (1952), wherein it is stated:

"It follows . . . that where the positions to be filled are not subject to the civil service rules and regulations respecting appointments the responsibility for determining the qualifications of applicants for such positions is upon the departments and agencies and the payment by them of any necessary expenses incident to the determination is proper . . . (Emphasis Supplied)

Positions in this Agency largely are exempt from the civil service laws and regulations and totally are exempt from the Classification Act of 1949 (63 Stat. 954). And among those qualifications necessary for employment with CIA, there are the applicant's ability successfully to pass both the headquarters-administered medical examination and the polygraph examination. While the cited decisions do not specifically provide either for the payment of round-trip travel expenses or per diem in instances of pre-employment interviews at prospective places of employment, we believe that it is their sense that such payment is authorized. This conclusion follows from the consideration of the following factors: (a) if any travel expenses are authorized, it would not seem reasonable that these were restricted to the trip to the place of prospective employment, within the strict wording of 3 Comp. Gen. 590; (b) the phrase "necessary expenses", appearing in 31 C.G. 480, is broad enough to include both round-trip travel expenses and per diem and (c) since the government already has certain well recognized standards for the payment of "necessary expenses" in terms of ticket-cost or mileage rates and per diem, there seems to be no reason why these standards should not be applied here. These things being so, and on the basis of the authorities cited, it is the opinion of this office that the plan proposed in your paragraph 1-a is not objectionable as a matter of law.

3. The situations posed in your paragraphs 1-b, 2-a(1) and 2-a(2) may be considered together in that all involve the placing of prospective employees in an employment, or duty, status prior to the administration of medical or polygraph examinations. This common aspect is significant because (a) at least so much of the travel involved in the trip to headquarters can be considered as travel to a first post of duty, and may not be paid by the government under a long line of Comptroller General's decisions (22 C.G. 869, 871 and decisions there cited (1943)), and (b) the payment of per diem to an employee while at his permanent duty station also is forbidden by the General Accounting Office (S.G.T.R. par. 46). However, before taking up this major issue, there are certain other aspects of all three paragraphs which we wish to discuss.

4. In your paragraph 1-b, you suggest that all applicants for employment at headquarters be "authorized travel to Washington, D.C., in order to enter on duty", and that return travel be authorized for those who do not qualify under the medical or polygraph examinations, or both (Emphasis Supplied). In support of this suggestion, the authority of

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25X1 certain officers within the Agency to authorize the payment of invitational travel expenses of a "candidate or applicant" for staff employment, set out in [] of the Confidential Funds Regulations, is urged on the possibility that a person failing of qualifications might be considered a "candidate or applicant" within the meaning of the authority granted. First, and in passing, granting the interpretation of "candidate or applicant" sought, such interpretation would not extend to persons who did not fail the medical or polygraph examinations. Whether, by its plain terms, this phrase is applicable to "all" persons who come to Washington to accept staff employment is related to a subject which we will touch on later. But as sought to be construed, it is not so applicable. Second, to authorize the travel expenses to Washington of "all applicants" would be to authorize such expenses for those who passed, as well as for those who failed, the medical or polygraph examination. Persons who pass the examinations, and who are retained in the employ of the Agency, undeniably are in the category of persons who have reported to their first duty station. And, as previously stated, payment of their travel expenses is not according to law.

5. In your paragraphs 2-a(1) and 2-a(1),

"A payment equal to the constructive cost of round-trip travel and per diem covering the period of his travel and stay in Washington, D.C."

in the instance of a person traveling to headquarters and failing either the polygraph or medical examinations and having to return, is suggested. If such a mode of payment were to be adopted, the sum in each instance would have to be that of travel and subsistence at standard, authorized government rates for travel and subsistence in terms of the distance and time involved. The "constructive cost" could not be a sum arbitrarily fixed and without reference to the Standardized Government Travel Regulations. So far as this office can determine, CIA is without authority to compute travel and subsistence expenses in such a situation (See 15 Comp. Gen. 206 (1935), and cases there cited).

6. We turn now to the matter of whether applicants who are brought to Washington and formally put in employment status, administered medical and polygraph examinations and fail either, or both, of these may be remitted round-trip travel expenses and per diem while in Washington. In this part of the discussion, we will not treat further the questions of whether, other considerations aside, round trip, as opposed to one-way, travel expenses may be allowed, or whether "necessary expenses" may include per diem. This point we believe to have been covered in paragraph 2 above.

7. The difficulty stems from the combination of (a) the Agency policy against giving medical and polygraph examinations before an applicant is an employee and (b) the fact that an applicant technically becomes an employee before, in any real sense, he has qualified for employment. Were it not for these factors, the previously cited rules against the payment of travel expenses to the first duty station and

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of per diem at a permanent station need not even be considered; and round-trip and subsistence expenses could be allowed pursuant to the opinion expressed in paragraph 2 above without further ado. However, the obvious sizeable expense of that dispensation warrants the search for another solution to the problem.

9. There is no doubt but that, related to the peculiar functions of this Agency, there is the requirement that its employees possess certain physical and security qualifications. Two means adopted to assess these qualifications are headquarters-administered physical and polygraph examinations. Assuming that these must be given at headquarters, new appointees must travel to Washington to take them. While this travel ostensibly is performed for the purpose of beginning work with the Agency, in fact it is performed for the purpose of taking these examinations -- as is evident from reference to the fact that persons who do not pass either, or both, of them are not retained for employment. Equally it is true that persons who perhaps return to their homes because, "due to a last-minute reorganization", the jobs for which they were recruited have been abolished, in fact are so doing because they have been rejected for employment for the reason they did not pass the medical or polygraph examinations. These circumstances, i.e., (a) the real purpose of the travel being primarily for, or as a direct result of, an Agency-imposed assessment procedure, (b) that assessment procedure being as significant as it is in terms of employment, in any real sense, by the Agency, and (c) that procedure also being directly related to the peculiar functions of the Agency, to us signify that the travel itself, and the interim stay in Washington, are closely related to the peculiar functions of the Agency.

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10. As for the second aspect of the matter, we are not of the opinion that the travel to and from Washington, and the stay here, of new appointees who fail either of the examinations comprise an administrative problem common to other government agencies. First, there are the considerations that (a) the travel to Washington is not travel to the first duty station in the conventional sense, but rather is travel to a first duty station in a conditional sense; (b) the stay here is not really for the purpose of undertaking the public service, but rather is for the purpose of further qualifying for such undertaking and (c) the return trip is not that of a person who has completed a period of federal employment, but that of a person who resented himself for qualification for such employment and failed. Second, so far as we have been able to find out, no other federal department or agency is in the position of having to hire people before they are actually qualified for employment. Third, we believe that this Agency is the only one which imposes a polygraph examination upon its employees, and attaches the peculiar significance thereto which we attach. To the contrary, the normal dispensation is that in which new appointees, having qualified for employment, travel to their first posts of duty and are taken on without further ado. While, with the passage of time, some of these may be found unfit for continued retention, their release, if at all, is accomplished on the basis of their being unfit to perform the work given them, not unfit to undertake that performance.

11. There are security considerations involved. The Agency is reluctant to give the polygraph examination to any person who is not an employee, who has not signed a secrecy agreement. Without this last, it has not even a technical guarantee that the fact of its employing the polygraph as part of its internal security processing will not be disclosed to unauthorized persons. If the polygraph examination (and the medical examination) could be administered prior to an applicant's being given employment status, there is no doubt but that travel and subsistence expenses of applicants incident thereto could be borne by the Agency under the reasoning set out in paragraph 2, supra, as it is part of the qualification-determining process. But, for security reasons, the polygraph is administered after the fact of employment.

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Second, anger or disappointment can loosen tongues. It is unlikely that a person who comes to Washington, takes the oath of office, and, so far as is apparent to him, has started work, but who then is put through medical and polygraph examinations and thereafter told that his position has been reorganized out of existence, will believe it. A minimum of reflection could lead him to the conclusion that something was turned up in either, or both, of these processes which rendered him persona non grata with the Agency. This turn of events, matched against the encouragement which theretofore he had received and the personal inconvenience to him attendant upon his coming to Washington, well can lead to his disclosure of information regarding the internal administrative processes of the Agency to outsiders in a moment of angry reflection. While this possibility would not be entirely obviated by the subsequent remission of travel and subsistence expenses, it is fair to hazard that it would be considerably mitigated.

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It is this Agency's responsibility to determine the qualifications of its applicants for employment, whether these be referred to as such, in recognition of the realities of the situation, or whether they be referred to as new appointees, in deference to their technical, legal status. And the administration of medical and polygraph examinations are as much a part of this determinative process of this Agency as are pre-employment interviews, security checks, etc. This is so whether these be given before or after formal entrance on duty. Likewise the theory of the regulations with regard to the payment of per diem is that it is intended to compensate for those extraordinary living expenses which one away from his home base and temporarily on duty at another location reasonably can be expected to encounter. New appointees to this Agency, while new to Washington, almost necessarily will have to live in hotels, eat in restaurants and generally order their lives in a manner similar to that demanded of a person on temporary duty at a new location. And, as regards an appointee who fails one of the examinations, his stay in town will be temporary, or can be presumed to be so.

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14. In closing, we suggest the following. Perhaps the simplest solution to the problem lies in apprising appointees of there being additional qualificatory obstacles ahead even after employment status technically has been granted. Such advice may be general in nature, not mentioning the polygraph examination at any rate, but with emphasis on significance in terms of retention for employment. Appointees so advised equitably can be considered as being on notice, consequently of accepting the risk of personal expense and inconvenience in coming to Washington and submitting to the additional qualification tests. Should they then fail to qualify, they cannot complain of lack of forewarning. And it is only this complaint, in connection with a rejection by the Agency, which has any public relations or equitable significance. If this course is not adopted and the feeling persists that the solution

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lies in the payment of travel and subsistence expenses to what might be called rejectees, then it is suggested that the method approved in paragraph 13 above be employed. So to do would require the expenditure of money only in that relative minority of instances in which appointees failed after having come on board instead of in the instances of all applicants for employment, the majority of whom can be presumed capable of qualifying after coming on board.


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